VIRGINIA LAW REGISTER

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The General Assembly practically adjourned on the 12th of March. It took a recess on that day to the 25th, but only for the purpose of disposing of the charges against Judge J. W. G. Blackstone of the Eleventh circuit. The body worked with care and in the limited time at their disposal did as much as could be weli expected of them. Little legislation of a startling character was enacted unless the so-called Byrd Liquor Bill can be denominated startling. "Stunning" would probably fit that remarkable instrument better, and the adjective can be happily applied both by believers in prohibition and their opposites—according to their respective points of view. We give this bill in full on another page, as we believe a properly arranged and annotated copy of it will be welcomed by the profession.

Work of The Legislature.

Much time of the General Assembly was consumed in investigating charges against Judge W. H. Rhea, appointed to the position on the State Corporation Commission made vacant by the resignation of Hon. Henry C. Stuart. Judge Rhea was ultimately confirmed.

The work of the Session very plainly indicates that the time allowed the General Assembly under the present Constitution is entirely too short. Meeting but once in two years, it is well nigh impossible to transact the legitimate business appertaining to the Legislative Department of a great Commonwealth like ours in the sixty days for which our Legislators are paid. The Appropriation Bill—the very life blood of the State—had to be pressed through under whip, and much important proposed Legislation fell through. We hope in our May number to give a brief *resume* of the Acts which affect our general Statute law.

We note with pleasure that the pay of jurors has been increased to $1.50 per day and five cents per mile—the mileage not to exceed $1.00 per day. If we could only have a Legislature bold

enough now, to abolish *all* exemptions from jury service except those arising from age or bodily infirmity, another great step would be taken for better juries.

Some quiet criticism of the Legislature in regard to the creation of a new circuit has been going on in the State. It has been more in the nature of a query than of a criticism. There are now thirty circuits in the State. There are seventeen corporation courts; two chancery courts. So we have forty-nine judges in the State, not counting the five appellate judges. There are one hundred counties. That averages a Circuit judge to three counties. Virginia has a population of two million in round numbers. England has a population of thirty-two million, and has twenty-three judges, who not only do the ordinary civil and criminal work, but also the Admiralty, bankruptcy, patent and trademark proceedings. It is true that there are a good many inferior tribunals who settle the smaller civil and criminal cases, but they correspond to our justices and police judges and need not enter into the comparison.

Additional Circuits.

The English judges are practically on the bench every day of the year, with the exception of the long vacation—not quite three months in summer and fall, and the short vacation, which is less than a month. So an English Judge is busily occupied for at least two hundred days in the year and does a good deal of work in chambers between term times. They are paid proper salaries and can afford to devote their whole time to their work. Indeed they are not allowed to do anything else. There is consequently little delay in litigation. Practice is settled. Nine judges arrange all the details and no question of practise ever "goes up." Lawyers are held to rigid compliance with the rules of courts and suitors and jurors have been taught severe lessons as to the effect of procrastination and delay. No time is wasted in court over questions of evidence or improper questions. The judges and lawyers alike seem perfectly familiar with the rules of evidence and counsel are sharply rebuked by the judge and frowned down upon by the profession when improper questions are asked. There is very little delay in selecting juries and no time is allowed to be lost in wrangling over the admission or rejection of testimony. We

boast of having inherited our laws and love of justice from our English ancestors. Might we not now follow our English kin in the great advances they have made in their rules of practise, their celerity and certainty of justice and in their judicial system. Fewer judges, higher pay, harder work, the cessation of our wrangling over questions of procedure and admission of testimony. "Fresh justice," saith my Lord Bacon, "is the sweetest." Should we not do all that we can to render it fresh and easy to obtain?

Poll Taxes.

The act approved February 25th, 1908, settled the long vexed question upon which the *nisi prius* courts of the State were divided, as to when the poll tax had to be paid in a special or local option election—providing that when any such election should be held on or before the second Tuesday in June in any year, any person shall be qualified to vote who is otherwise qualified and has personally paid, at least *six months prior to the* second Tuesday in June of that year, all State poll taxes assessed or assessable against him during the three years next preceding that in which such election is held. If the election is after the second Tuesday in June, then any person qualified to vote at the regular election to be held the Tuesday after the first Monday in November of that year, can vote at a special election.

And now the Court of Appeals comes along and by its decision in the case of Tazewell v. Herman, Treasurer, from the Law and Chancery Court of the City of Norfolk, rendered March 16th, 1908, holds, that a voter in order to have himself put upon the list of qualified voters required to be furnished by the Treasurer, must have paid the poll taxes required by law *in person*. There can be no *facit per alium facit per se* in this case. The Court says: "It is clear from the language of Sections 20 and 21 that the poll taxes which a person is required to pay as a prerequisite to his right to register or vote must be personally paid," and that whilst the taxes *may be paid* by another person, yet, "only those who had *personally* paid" these taxes could go on the Treasurer's list and be allowed to register or vote. So hereafter the person desiring to vote, must pay the required poll tax *in propria persona*.

That this decision will lead to much inconvenience and will lessen the list of qualified voters can scarcely be doubted, but no one can question its correctness or wisdom.

Evidence in Cases Where the "Unwritten Law" Is Pleaded.

Amongst other general enactments, an act has been passed and approved February 20th, 1908, making it lawful hereafter in a prosecution for felonious homicide or for assault with felonious intent, or in cases arising under Section 3671 of the Code, whenever the accused has been permitted to introduce evidence tending to show that he believed a wrong to have been committed upon some member of his family, &c., whether the same be offered in support of the defense of insanity or as evidence of extenuating circumstances, for the Commonwealth to introduce evidence as to the truth or falsity of the existence of such wrong, and for the accused to introduce evidence in rebuttal. This act was undoubtedly occasioned by the decision of the Courts in the Bywaters and Loving cases, and we believe is a wise law in the light of those cases.

A Distinction and a Difference.

The Supreme Court of the United States and the Court of Last Resort in the State of New York have within the last twelve months rendered decisions on identically the same question, diametrically opposed to each other. In the case of the State *v.* Williams, Judge Gray, of the New York Court of Appeals, rendering the opinion of the Court held, that the law regulating the hours of employment of women in factories in the night time was unconstitutional, the Court putting the woman on the same basis as the man as to contracts, and stating that "Considerations of her physical differences are sentimental and find no proper place in the discussion of the constitutionality of the act."

In the case of Muller *v.* The State of Oregon, decided February 24th, 1908, the Supreme Court of the United States held that a conviction under the law of the State of Oregon for violating the act prohibiting a woman from working more than ten

hours daily in a laundry was legal and proper; that the act was in no way in violation either of the Federal or the State constitution. The Court bases its decision directly upon the woman's physical difference. "This difference," says Justice Brewer, delivering the opinion of the Court, "justifies a difference in Legislation and upholds that which is designed to compensate for some of the burdens which rest upon her." So the Supreme Court of the United States takes the sentimental view of the case, holding a law of this character good and valid; whilst the New York Court is eminently practical and declines to recognize any difference between a male and a female as far as contractual relations are concerned.

The decision of the Supreme Court of the United States is rendered all the more emphatic by the fact that the same tribunal in the case of Lochner *v.* New York, 198 U. S., p. 45, held that a law providing that no laborer shall be required or permitted to work in bakeries more than sixty hours in a week or ten hours in a day, was *as to men* an unreasonable, unnecessary and arbitrary interference with the right and liberty of the individual to contract in relation to his labor, and as such was in conflict with and void under the Federal Constitution. The Court holds that the difference in sexes justifies a different rule respecting a restriction of the hours of labor, and that, in the teeth of the fact that in the State of Oregon, as in the State of New York, a woman, as far as her property rights are concerned stands upon the identical same footing with a man.

Evidently the New York Court took the view of the New York farmer who was occupying a seat in a crowded street car during the session of a Woman's Rights Convention in the City of Rochester. A large, plain-featured and middle aged female entered the car, planted herself in front of the bucolic, seized a strap and glared at the sitting man as only such a female can glare under such circumstances. Growing restive under her stare the gentleman in a feeble voice demanded of her, "Madam, be ye one of these here women's righters?" "I am, sir," she replied, "and a delegate to the convention." A look of relief came over the farmer's face as, settling himself back, he ejaculated, "Then stand up and enjoy your rights like a man." The Supreme Court of the United States is more gallant, and once more finds the "police power" of the State a convenient staff, upon which to lean.

It is rather curious that this Court makes no allusion to the case of State *v.* Williams, citing Ritchie *v.* People, 155 Ill. p. 98 as the only case against the unconstitutionality of such acts.

Receivers.

The statement has been made that "the settlement of affairs of insolvent monied corporations by the courts has done more than any other one thing to bring the administration of justice into disrepute." This statement is probably too broad, but that there has been great abuse in this direction cannot be doubted. Manifestly this ought not to be, because as was said in Beverley *v.* Brooke, 4 Gratt. 187, which is the leading case in this state, the receiver appointed is the officer and representative of the court, subject to its orders, accountable in such manner and to such persons as the court may direct, and having in his character of receiver no personal interest, but that arising out of his responsibility for the correct and faithful discharge of his duties." So that his maladministration is the maladministration of the court. It is the intent of the law that a receiver should be a preserver. He takes charge of the property pending litigation or reorganization, administers it, makes sales, collects proceeds or increase, and makes an accounting to the court. He is not a public prosecutor or penal officer of any sort. He is a trustee, and it is his duty to make out of the property in his charge the largest possible returns for creditors and owners. In the case of a bank it is his obvious duty, after protecting the interests of creditors and depositors, to care for the interests of stockholders. A receiver who by mistake or maladministration should force into liquidation a bank that ought properly and safely, have resumed business would be little better than a wrecker. Without any intent of special application, these considerations of the nature of receivership are appropriate at the present time, and are becoming more so every day. Receivership is a business trust and not a private plum. A receiver should be a man of unimpeachable honor and integrity, having sufficient knowledge and ability to manage the estate properly, without the intervention of any third party. The employment of expensive counsel is in many cases an abuse. The undue prolongation of the receivership in order that the receiver may fatten upon rich fees is a scandalous

abuse of trust. The first duty of the receiver is to the property, not to himself. The allurement of the picking is, in fact, one of the chief sources of receivership abuses. The criticisms of the receivership process, and the doings of the receivers are welcome. At the present time in this state there is one large railroad corporation in the hands of receivers, and it is not amiss to impress upon these officers of the court a lively sense of their duty. A glance at §§ 3405 to 3409 of the Virginia Code will reveal the importance of what we have said. The broad powers given to this officer by those sections should be carefully safeguarded from abuse, and he should be held to a rigid accountability to the court.